

**FILED**

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Board of Vocational Nursing  
and Psychiatric Technicians

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-681

**MELISSA ANNE HULBERT**

1008 Sims Street  
Ridgecrest, CA 93555

**A C C U S A T I O N**

Vocational Nurse License No. VN 234078

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On or about April 28, 2008, the Board issued Vocational Nurse License No. VN 234078 to Melissa Anne Hulbert (Respondent). The Vocational Nurse License expired on December 31, 2009, and has not been renewed.

**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1, the Bureau may renew an expired license at any time within four (4) years after the expiration.

5. Section 490 states:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

...

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. . . .”

6. Section 492 states:

“Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any

1 initiative act referred to in that division.”

2 7. Section 2875 provides that the Board may discipline the holder of a vocational nurse  
3 license for any reason provided in Article 3 (commencing with section 2875) of the Vocational  
4 Nursing Practice Act.

5 8. Section 2878 states:

6 “The Board may suspend or revoke a license issued under this chapter [the Vocational  
7 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the following:

9 ...

10 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
11 violating of, or conspiring to violate any provision or term of this chapter.

12 ...

13 (f) Conviction of a crime substantially related to the qualifications, functions, and duties  
14 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive  
15 evidence of the conviction. . . .”

16 9. Section 2878.5 states, in pertinent part:

17 In addition to other acts constituting unprofessional conduct within the meaning of this  
18 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed  
19 under this chapter to do any of the following:

20 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
21 physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or  
22 administer to another, any controlled substance as defined in Division 10 of the Health and Safety  
23 Code, or any dangerous drug as defined in Section 4022.

24 (b) Use any controlled substance as defined in Division 10 of the Health and Safety  
25 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in  
26 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the  
27 extent that the use impairs his or her ability to conduct with safety to the public the practice  
28 authorized by his or her license.

1 (c) Be convicted of a criminal offense involving possession of any narcotic or dangerous  
2 drug, or the prescription, consumption, or self-administration of any of the substances described  
3 in subdivision (a) and (b) of this section, in which event the record of the conviction is conclusive  
4 evidence thereof.”

5  
6 **REGULATORY PROVISIONS**

7 10. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

8 ...

9 “(b) A licensed vocational nurse shall adhere to standards of the profession and shall  
10 incorporate ethical and behavioral standards of professional practice which include but are not  
11 limited to the following:

12 ...

13 (4) Abstaining from chemical/substance abuse; and

14 ...

15 “(c) A violation of this section constitutes unprofessional conduct for purposes of  
16 initiating disciplinary action.”

17 11. California Code of Regulations, title 16, section 2521 states, in pertinent part:

18 “For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5  
19 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be  
20 considered to be substantially related to the qualifications, functions or duties of a licensed  
21 vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed  
22 vocational nurse to perform the functions authorized by his license in a manner consistent with  
23 the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those  
24 involving the following:

25 ...

26 (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
27 violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the  
28 Business and Professions Code.

(f) Any crime or act involving the sale, gift, administration, or furnishing of ‘narcotics or dangerous drugs or dangerous devices’ as defined in Section 4022 of the Business and Professions Code.”

## COST RECOVERY

12. Section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**CONTROLLED SUBSTANCE / DANGEROUS DRUG**

13. Methamphetamine, a CNS<sup>1</sup> stimulant, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to section 4022.

## FIRST CAUSE FOR DISCIPLINE

**(Conviction of a Substantially Related Crime)**

14. Respondent is subject to disciplinary action under sections 490, 2878, subdivision (f), and 2878.5, subdivision (c) in conjunction with California Code of Regulations, title 16, section 2521 and 2521, subdivision (f), in that Respondent was convicted of a crimes substantially related to the qualifications, functions or duties of a licensed vocational nurse which to a substantial degree evidences her present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. The circumstances of the conviction are as follows:

a. On or about January 10, 2011, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11550(a) under the influence of a

<sup>1</sup> CNS is an abbreviation for central nervous system.

1 controlled substance] in the criminal proceeding entitled *The People of the State of California v.*  
2 *Melissa Anne Hulbert* (Super. Ct. Kern County, 2010, No. RM035442A). The Respondent was  
3 ordered to complete the deferred entry of judgment program. Respondent was also ordered to pay  
4 fines and fees

5 b. The circumstances underlying the conviction are that on or about July 17, 2010, Kern  
6 County Sheriff Deputies confronted Respondent while riding as a passenger on the back of a  
7 motorcycle. Respondent was determined to be under the influence of a controlled substance, to  
8 wit, methamphetamine.

9 c. On or about May 4, 2010, after pleading nolo contendere, Respondent was convicted  
10 of one misdemeanor count of violating Health and Safety Code section 11364 [possession of  
11 paraphernalia] in the criminal proceeding entitled *The People of the State of California v. Melisa*  
12 *Anne Hulbert* (Super. Ct. Kern County, 2010, No. RM034785A). The Court placed Respondent  
13 on two (2) years probation. The Respondent was also ordered to pay fines and fees. Respondent  
14 was found to be in violation of probation.

15 d. The circumstances underlying the conviction are that on or about January 24, 2010,  
16 Respondent was contacted by Ridgecrest Police Officers while visiting a hotel where drug  
17 activity was reported. Officers confronted Respondent in the hotel room and discovered a black  
18 duffel bag containing a glass pipe commonly used for smoking methamphetamine. Respondent  
19 admitted that the bag belonged to her. Respondent was subsequently arrested.

## 20 21 **SECOND CAUSE FOR DISCIPLINE**

### 22 **(Self-Administration of a Controlled Substance)**

23 15. Respondent is subject to disciplinary action under sections 2878, subdivision (a),  
24 and 2878.5, subdivision (a), on the grounds of unprofessional conduct, in that Respondent  
25 obtained or possessed controlled substances for self-administration, in violation of the law.

26 a. On or around January 28, 2012, a Ridgecrest Police Officer identified Respondent,  
27 who appeared to be "disoriented". Respondent displayed symptoms of central nervous system  
28 stimulant use, including dilated pupils, elevated pulse rate and jerking extremities. Respondent

1 admitted that she smoked methamphetamine earlier the same day. Respondent was arrested for  
2 violation of Health and Safety Code section 11550, subdivision (a) [under the influence of a  
3 controlled substance].

4 b. On or around August 2, 2010 Ridgecrest Police Officers were dispatched to a home  
5 where at approximately 4:30 a.m., Respondent broke a window and entered the home without  
6 permission. Respondent assaulted her 16 year old daughter who resided in the home at that time  
7 by choking her and striking her with closed fists. When officers arrived, Respondent locked  
8 herself in the bathroom. When officers finally confronted Respondent upon her exit from the  
9 bathroom, she appeared "fidgety". Respondent continued to look around in a "paranoid" manner.  
10 Respondent displayed several objective signs of being under the influence of controlled substance  
11 including horizontal and vertical nystagmus, eyelid tremors and twitching extremities.  
12 Respondent was subsequently arrested for violating Health and Safety Code section 11550,  
13 subdivision (a) [under the influence of controlled substance] and Penal Code section 273a(b)  
14 [willful cruelty to a child].

15 c. In addition, Complainant incorporates by reference the allegations set forth above in  
16 paragraph 14, subparagraphs (a) – (b), as though set forth fully herein.

### 17 18 **THIRD CAUSE FOR DISCIPLINE**

#### 19 **(Dangerous Use of Controlled Substances)**

20 16. Respondent is subject to disciplinary action under sections 2878, subdivision (a),  
21 and 2878.5, subdivision (b), on the grounds that Respondent dangerously used a controlled  
22 substance and dangerous drug, to an extent or in a manner to be dangerous to herself or others.  
23 Complainant incorporates by reference the allegations set forth above in paragraphs  
24 14 and 15, inclusive, as though set forth fully herein.

25 //

26 //

27 //

28 //

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Abstain from Chemical/Substance Abuse)**

3 17. Respondent is subject to disciplinary action under section 2878, subdivision (a), in  
4 conjunction with California Code of Regulations, title 16, section 2518.6 (b)(4), on the grounds  
5 that Respondent failed to abstain from chemical/substance abuse. Complainant refers to and by  
6 this reference incorporates the allegations set forth above in paragraphs 14 - 16, inclusive, as  
7 though set forth fully herein.

8  
9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct / Violate Vocational Nursing Practice Act)**

11 18. Respondent is subject to disciplinary action under section 2878, subdivisions (a) and/  
12 or (d), in conjunction with California Code of Regulations, title 16, sections 2518.6 (c) and 2521  
13 (c) in that Respondent committed acts of unprofessional conduct and / or acts violating the  
14 Vocational Nursing Practice Act.

15 a. On October 7, 2011, Respondent was held in custody at a grocery store after  
16 employees learned that Respondent exited the store without paying for items that she placed in  
17 her shopping bag. The items were valued at \$69.88. When Ridgecrest Police Officers arrived,  
18 Respondent was placed under arrest for violation of a bench warrant issued pursuant to *The*  
19 *People of the State of California v. Melissa Anne Hulbert* (Super. Ct. Kern County, 2010, No.  
20 RM035442A).

21 b. In addition, Complainant refers to and by this reference incorporates the allegations  
22 set forth above in paragraphs 14 - 17, inclusive, as though set forth fully herein.

23  
24 **PRAYER**

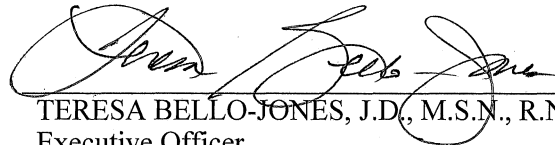
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Board issue a decision:

27 1. Revoking or suspending Vocational Nurse License No. VN 234078, issued to Melissa  
28 Anne Hulbert;

1           2.     Ordering Melissa Anne Hulbert to pay the Board the reasonable costs of the  
2 investigation and enforcement of this case, pursuant to section 125.3; and

3           3.     Taking such other and further action as deemed necessary and proper.

4     DATED:     **MAR 05 2013**



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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